

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA, et	:	CASE NO.: 1:02-cv-00107
al.,	:	
	:	
Plaintiffs,	:	JUDGE S. ARTHUR SPIEGEL
	:	MAGISTRATE HOGAN
v.	:	
	:	RESPONSE TO DOLWIG
	:	REQUEST FOR REVIEW
BOARD OF HAMILTON COUNTY	:	
COMMISSIONERS, et al.	:	
	:	
Defendants.	:	

The City and County Defendants (“the MSD”) respond to Katherine Dolwig’s Motion for a Review (Doc #167) as follows:

1. The MSD investigated Ms.Dolwig’s claim through the City of Cincinnati’s claims office. At the time the Claims Administrator was Anita Boulmetis.
2. Ms. Boulmetis responded to Ms.Dolwig’s May 9, 2003 claim with a claim determination dated April 8, 2004. (Attached to Doc#167). Ms. Dolwig’s claim was denied as stated in the letter.
3. The MSD WIB program became effective on or about January 1, 2004 for capacity related complaints that occurred on or after January 1, 2004.
4. For incidents prior to January 1, 2004, the MSD defendants treated claims for sewage or storm water back up as a negligence claim against the MSD, City, or County.
5. The Consent Decree including the WIB program was entered by the Court on June 9, 2004. (See, Doc. # 129, 130).

6. The MSD did not investigate the cause of the water in the basement at 1332 Ault View to determine if it was eligible for the WIB program because the event occurred in 2003.
7. If Ms. Dolwig wanted to pursue a negligence claim against the MSD, City, or County, there was a two-year statute of limitations in Ohio to file her Complaint. R.C. 2744.05.
8. Ms. Dolwig did not file a Complaint in Ohio but filed a request for review in Federal Court on March 2, 2007. Because the event occurred in May of 2003, her Complaint in Ohio should have been filed by May of 2005.
9. The Water in Basement (“WIB”) program only applies to buildings that have experienced wastewater backups due to the inadequate capacity of the sewer system.
10. Based on the information provided by Ms. Dolwig, her May 2003 event was not included in a WIB investigation. As such, the MSD did not make a determination of the specific cause of her backup
11. Her neighbor, Jim May, filed a claim for an event in July of 2004, after the WIB program began. Mr. May’s claim was paid by the City, but review of the claim does not demonstrate that the backup on his property was related to a sewer capacity issue. In any event, Ms. Dolwig’s claim was not investigated under the WIB program, and her claim was denied.

Accordingly, the MSD defendants request that Ms. Dolwig’s Request for Review be denied.

Respectfully submitted,

JULIA L. MCNEIL (0043535)
City Solicitor

/s/ Terrance A. Nestor
Terrance A. Nestor (0065840)
Assistant City Solicitor
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
Ph. (513) 352-3327
Fax. (513) 352-1515
E-mail: terry.nestor@cincinnati-oh.gov
Trial Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify on April 2, 2007 a true and accurate copy of the foregoing Response was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Terrance A. Nestor
Terrance A. Nestor (0065840)
Sr. Assistant City Solicitor